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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JILL PATT, D.V.M., and LITTLE
CRITTERS VET, LLC, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

ANTECH DIAGNOSTICS, INC.

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR
RESTITUTION, INJUNCTION
AND DAMAGES
[PROPOSED CLASS
ACTION] VIOLATIONS OF
CAL. BUS. & PROF. CODE §
17200 AND BREACH OF
CONTRACT – IMPLIED
COVENANT OF GOOD
FAITH AND FAIR DEALING**

DEMAND FOR JURY TRIAL

1 Plaintiffs Jill Patt, D.V.M., and Little Critters Vet, LLC, on behalf of
2 themselves and all others similarly situated, allege the following:

3 **I. PARTIES**

4 **A. Individual and Representative Plaintiffs**

5 1. Dr. Jill Patt, D.V.M. is a veterinarian, practicing through the auspices
6 of Plaintiff Little Critters Vet, LLC, in Gilbert, Arizona.

7 2. Little Critters Vet, LLC, is a limited liability company formed under
8 Arizona law that operates a veterinary office and practice under the tradename
9 Little Critters Veterinary Hospital in Gilbert, Arizona.

10 **B. Antech**

11 3. Antech Diagnostics, Inc. (“Antech”) is a California corporation with
12 its corporate headquarters located at 17620 Mt. Hermann Street, Fountain Valley,
13 California 92708. It s a subsidiary of VCA, Inc., sometimes operating under the
14 tradename VCA Antech, which began as an owner and operator of veterinary
15 hospitals, but which now also holds subsidiaries operating in a number of pet
16 health sectors. On January 9, 2017, Mars, Inc. announced that it was purchasing
17 VCA, Inc. for approximately \$9.1 billion and, on September 12, 2017, announced
18 that the acquisition had been completed.

19 **II. JURISDICTION AND VENUE**

20 4. This Court has original jurisdiction of this action under the Class
21 Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this
22 Court has original jurisdiction because the aggregate claims of the members of the
23 putative Class exceed \$5 million, exclusive of costs, and each Plaintiff is a citizen
24 of a different state than Defendant.

25 5. The Central District of California has personal jurisdiction over
26 Antech because it is authorized or registered to do business and operate in this
27 District where it employed, and continues to employ, the sale tactics detailed in
28 this Complaint.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Antech's headquarters are in this District and it transacts substantial business within this District. Antech's form contracts for selling veterinary diagnostic laboratory test results include a venue provision providing, "Each of the parties hereto hereby irrevocably consents and submits to the exclusive personal jurisdiction of United States District Court for the Central District of California.

III. SUBSTANTIVE ALLEGATIONS

A. Antech Falsely Represents that it Provides Accurate Lab Results

7. Historically, lab results provided to veterinarians have been highly accurate. In most cases, there is an objective, scientific answer that can be determined consistently with precision. Most veterinarians, when presented with the question of which lab to choose, do not anticipate that there will be significant variance in the quality of the lab results because that has not been the case historically.

8. Antech represents that its lab results are of high quality and can be trusted because, among other things, it claims to employ high quality staff. One such online representation is: "No one better understands the importance of quality patient care and the value of accurate, dependable diagnostic testing than VCA ANTECH. ... Dependable testing is more than technology; accurate and dependable results rely on highly skilled and trained technicians. Each and every ANTECH Laboratory Technician is under daily QA/QC programs designed to ensure accurate results while receiving annual mandatory testing to insure their skills and knowledge are second to none." (<http://www.antechdiagnostics.com/main/becomeanantechclient.aspx>). Dr. Patt saw and relied on this representation and other Antech representation of Antech's

1 quality results prior to entering into an agreement with Antech. This
2 representation was intended to and did create the false impression that Antech
3 manages its laboratory technician staff in such a way as to insure accurate and
4 dependable test results. This impression is false for the reasons described below.

5 9. Antech produces a steady stream of statements to veterinarians
6 touting quality, such as the line on the front page of its 2015 fee schedule
7 declaring that Antech is, “Defining the Standard of Excellence” at its diagnostic
8 labs.

9 10. Antech does not disclose and actively conceals the high level of
10 incorrect lab results that it generates, as well as the complaints it regularly
11 receives from veterinarians like Dr. Patt advising Antech that it provided false lab
12 results and reports. Dr. Patt would not have entered into an agreement for the
13 provision of lab testing and results with Antech if she had known that it provides
14 false lab results.

15 **B. Antech’s Onerous Exclusive Contracts**
16

17 11. Antech requires veterinarians to whom it provides what it contends
18 are preferred pricing and priority customer service for its laboratory testing to
19 sign a form contract it calls the “Exclusive Laboratory Services Agreement” (the
20 “Exclusive Agreement). The Agreement signed by Dr. Patt on July 6, 2017 is not
21 attached to this Complaint because it includes a confidentiality provision
22 purporting to prohibit veterinarians from disclosing any terms of the agreement
23 and declaring that a breach of any of the promises in the agreement will result in
24 irreparable and continuing damage to Antech Diagnostics for which there shall be
25 no adequate remedy at law. Notwithstanding this confidentiality provision,
26 Antech routinely files the form agreement, including pricing, as an exhibit to
27 complaints it files in federal courts around the country against veterinarians it
28 deems to have violated the agreement. For example, Antech filed the entire

1 agreement in this District on December 11, 2015 in the case of *Antech*
2 *Diagnostics v. Stamford Vet Center and Marcus Suppo*, Case No. 15-cv-
3 9577DMC-E. A copy of that iteration of Antech's form agreement is attached
4 hereto as Exhibit A.

5 12. Antech's confidentiality provisions prohibit veterinarians from
6 disclosing any terms of the agreement or any pricing information related to the
7 laboratory services provided under the agreement. This strict confidentiality
8 clause, particularly when combined with the "loan" and other purported discounts
9 contained in the agreement, discussed below, create a conflict of interest between
10 veterinarians and their clients because, under California rules, veterinarians are
11 required to disclose the actual price charged by the laboratory for results.

12 13. The confidentiality provisions in Antech's Exclusive Agreement, in
13 conjunction with other provisions and practices discussed below, were designed
14 to and have the effect of inhibiting and prohibiting veterinarians from discussing
15 amongst themselves their relations with Antech. As a consequence, the ability of
16 veterinarians to mitigate the impact of Antech's onerous practices by ameliorating
17 conduct has been impaired.

18 14. Another factor making it difficult for veterinarians to communicate
19 about, or even discern, Antech's conduct is the way in which Antech structures its
20 statements to veterinarians so that the veterinarian has no means of knowing if
21 Antech is honoring the preferred pricing specified in the Exclusive Agreement.
22 Specifically, Antech simply provides a lump sum discount at the bottom of its
23 statements with no information about what was actually charged to the veterinary
24 practice per each individual test.

25 15. Antech's Exclusive Agreement has an initial term of 6 years,
26 requiring that veterinarians use Antech for almost their entire laboratory testing
27 requirements during the term of the Exclusive Agreement. The Exclusive
28 Agreement states, "During the Term, Practice Owner shall cause all Laboratory

1 Services that are to be performed for and on behalf of the Practice(s), to be
2 performed by a veterinary diagnostic laboratory owned or operated by Antech
3 Diagnostics.” There are certain limited exceptions to the exclusivity provision,
4 such as for tests that Antech does not perform, or where the test prices are less
5 than 10% of all fees for such services.

6 16. Antech’s Exclusive Agreement also sets a minimum dollar amount
7 per year that each practice must pay Antech. For Dr. Patt, the agreement provided
8 for purchase, after application of all discounts and credits, veterinary diagnostic
9 laboratory services from Antech in “an aggregate amount of not less than
10 \$24,000” for each 12 month period following the July 1, 2017 Effective Date of
11 the contract. These annual minimum requirements, a standard feature of
12 Antech’s Exclusive Agreement, affect the incentives Antech will pay.
13 Specifically, Antech salesmen endeavor to get veterinarians to agree to higher
14 annual minimum limits in order to obtain greater incentive payments.

15 17. Antech’s form Exclusive Agreement also provides for a loan to the
16 practice owner for a period equal to the exclusive term. For Dr. Patt, the
17 agreement provided a loan in the amount of \$12,000 for a period of 6 years at an
18 annual interest rate of 7%. The “loan” is actually an element of the pricing and a
19 mechanism to further incentivize practice owners to comply with the exclusivity
20 requirements. Thus, the loan includes a “forgiveness” provision that forgives
21 each year’s annual loan payment when the practice owner complies with its
22 minimum dollar amount of purchases from Antech, as required under the
23 Exclusive Agreement.

24 18. Section 2 of the Exclusive Agreement states, “All Laboratory
25 Services provided by Antech Diagnostics pursuant to this Agreement are provided
26 in accordance with and subject to all terms and conditions set forth in the
27 ANTECH Service Directory in effect at the time the Laboratory Services are
28 performed.” The Antech Service Directory states, “In accepting work, we warrant

1 that we shall provide services in a professional manner by qualified personnel,
2 and we warrant the accuracy of the test results for the specimen submitted.”

3
4 **C. Antech’s Provision of False Lab Results**

5 19. False lab reports place the veterinarians, their employees, and their
6 patients at significant risk. False lab reports also place a veterinarian’s practice
7 license at risk with their state board licensing agency. Further, if the false lab
8 results cause complications for the pet, the veterinarian could be liable.

9 20. In December 2017, Dr. Patt began to have concerns over the quality
10 of Antech’s lab results. At that point, she had received results from Antech on
11 fecal samples that came back negative and, when questioned, were changed by
12 Antech to positive. Suspicious of the results she was receiving and concerned
13 about the potential impact on her practice resulting from incorrect diagnoses
14 resulting from false lab results, Dr. Patt began watching more closely for errors in
15 the results and found several. These errors included blood serology for disease
16 testing (both false positives and false negatives), as well as blood chemistry
17 results, urinalysis and fecal results. Her assistant began contacting the lab about
18 the errors in the lab results, but received back mere excuses or no response at all.

19 21. On December 27, 2017, Dr. Patt sent an email to her Antech
20 representative to follow up on her assistant’s communications. In the email, Dr.
21 Patt stated her concerns about the false lab results and identified several specific
22 problems including:

- 23 (a) Antech’s failure to provide normal reference ranges, even when Dr.
24 Pratt labeled the breed and species consistent with Antech’s
25 requirements;¹

26
27 ¹ Exotic pet normal reference ranges for testing should be based on a previously
28 established bell curve. Dr. Patt later discovered that Antech has failed to comport
with standard accepted laboratory protocols by failing to establish normal
reference ranges for exotic pets specific to their labs and equipment.

- (b) Antech's failure to provide any results, falsely claiming the sample was not large enough in the case of Charlie Steel, a bird that died before Dr. Patt could obtain another sample;
- (c) Antech's false negative on a fecal sample of Pocket, a rescue pet, that was changed to positive;
- (d) Antech's false negative on a fecal sample of Rigby, that was also changed to positive; and
- (e) Antech's picking up lab samples prior to the scheduled time, resulting in their not being received by Antech in a timely manner because they were not prepared for pickup at the earlier, unscheduled time.

22. Over the next five to six months, Dr. Patt documented several false lab results that Antech reported and continued to charge her for, notwithstanding the errors. These false reports include:

- (a) Bella, a clinically healthy normal cockatoo with high uric acid and elevated liver values, for which Antech could not rerun sample because it was discarded due to time frame;
- (b) Tank, a tortoise, who Antech falsely reported to have fecal results confirmed as positive for hookworms and corrected upon request for review;
- (c) Butters, a dog, who Antech provided an incorrect coccidioidomycosis (Valley Fever test) positive result later corrected to negative;
- (d) Dexter, a dog for whom Antech provided an incorrect positive result for Ehrlichia Canis (tick fever test), a potentially life threatening disease;
- (e) Phoebe, for whom Antech provided suspiciously low white blood counts;

1 (f) Kevin, a bearded dragon with diarrhea, for whom Antech
2 incorrectly reported the results as negative, but later said that the
3 tech noted that specimen leaked, and then updated the results to
4 positive for coccidia;

5 (g) Many more documented false lab results.

6 23. Suspicious of results she was receiving, Dr. Patt would request that
7 Antech verify the results. Several times she then received a corrected report days
8 later with no contact from Antech or explanation of the failure, unless Dr. Patt
9 pursued the matter further. In several instances, Antech reported the verification
10 of the results incorrectly and had to later correct these when they were questioned.

11 24. Documenting false lab results is a difficult endeavor that requires the
12 veterinarian and her staff to do far more work than would otherwise be the case.
13 Often the samples are destroyed during the testing process. There are not easy
14 methods to get second opinions on the lab tests in question. In some cases, Dr.
15 Patt was able to get Antech to review the tests to provide the correct results, but
16 only because she spent the additional time and effort to follow up with Antech.
17 And this additional time expended delayed her ability to report results to pet
18 owners and in some cases delayed or precluded the correct treatment. The
19 provision of false positives causes the veterinarian to research the causes and
20 treatments of diseases that the pet does not actually have. The knowledge that test
21 results are untrustworthy causes the veterinarians and their staffs to question all of
22 the lab results and to spend much more time reviewing every detail in an attempt
23 to not miss a false report from Antech that would cause a patient to suffer.

24 25. A greater problem lies in those lab results that were not further
25 examined at this level of detail, for there will be many instances of false lab
26 results that go unnoticed because veterinarians need to and do trust the results
27 they receive. Once Dr. Patt knew about the false lab results she had documented,
28 she knew that she had unknowingly used other false lab reports in her practice

1 and was no longer able to trust any results from Antech. In particular, as a result
2 of Antech's faulty lab reports, Dr. Patt had to be concerned that she would have
3 to address ill patients months or years later (especially for tick fever or valley
4 fever) whose test results were falsely reported by Antech as negative. These
5 circumstances result in Dr. Patt having to expend additional time and money in
6 providing veterinary care, as well as causing stress to the practice and worries
7 about licensing.

8 26. Dr. Patt sent dozens of communications to Antech regarding the false
9 lab results and requesting changes to her contract, which at that point, purported
10 to require her to continue using Antech exclusively for her lab tests for another 5
11 to 5 ½ years. On the requests to change the contract, she received no response.

12 27. Dr. Patt posted her concerns about Antech's false lab reports on an
13 online forum for veterinarians, to which other veterinarians around the country
14 responded with numerous additional examples of Antech providing false lab
15 results. Other veterinarians included among their reports of false Antech lab
16 results, the following:

- 17 (a) Falsely reporting sensitivities to antibiotics that violate FARAD
18 with regard to chicken cultures;
- 19 (b) Lost two histopathology samples where the vet had sent the entire
20 masses, so there was no way to go back for more tissue;
- 21 (c) Incorrect reports sent on two cases where the vet contacted the pet
22 owners with the results only to have Antech send "corrected" results
23 later, which required the vet to call the owners to tell them that he
24 had provided them with incorrect lab results;
- 25 (d) UAs sent out for analysis did not come close to what vet saw in
26 house; samples loaded with bacteria, WBC, even sperm, and Antech
27 saw "no cells and no bacteria;"
- 28 (e) Found their T4 levels on cats were very unreliable when a cat came

1 back normal and when rechecked two weeks later (after he
2 continued to lose weight and vomit), he was severely hyperthyroid;
3 checked the other T4 results that had been relied on and found two
4 others that were hyperthyroid;

5 (f) Wrong sample used for a black lab with a large, black mass on its
6 toe; the results from Antech reported malignant melanoma, so the
7 entire toe was amputated and sent to Antech and the histopathology
8 report came back squamous cell carcinoma; when asked why the
9 results did not include the melanoma or the decalcified toe bone, the
10 tech reported that they were not present in the sample,

11 demonstrating that Antech provided results from the wrong sample;

12 (g) After Antech bought one local lab and merged it into Antech, a
13 veterinarian sent a UA to get an ID on a Crystal seen in urine; on a
14 fresh sample, there were at least 30 crystals per HPF; Antech's
15 results were completely off-base, showing no crystals, the pH, SP
16 GRAV and the blood were all completely different than the urine
17 sent in; spoke with the person in charge and learned that the person
18 handling the urine samples was running behind, so he would run
19 about every tenth one, and then (slightly) adjust those results and
20 report them for the other nine.

21 28. Antech monitors the online forum on which veterinarians post their
22 comments and concerns. In one case, Antech convinced a member of the forum
23 to share the discussion or their login with Antech, which then reviewed Dr. Patt's
24 post. This conduct was in violation of the rules of the forum, such that the owner
25 of the forum removed the person from membership in the forum and advised
26 Antech that if it continued in its conduct, all veterinarians associated with Antech
27 or VCA, Inc. would be also removed. Additionally, Antech has threatened to sue
28 one anonymous poster on the forum and in another case changed its negotiation

1 tactics against a veterinarian who advised forum readers that the Antech contracts
2 contain a buried clause that requires notice one year in advance of terminating a
3 contract, even where the contract appears to be for a set term.

4 29. Antech's faulty laboratory practices threaten not only the health of
5 animals, but of humans. For example, Antech has provided false negative fecal
6 results for hookworms in veterinary patients, such as in the instance of an animal
7 named Petal Patt. Hookworms are a zoonotic disease infecting humans, and
8 specifically children. Consequently, false negative results for this condition
9 increase the likelihood that human children will contract hookworm from their
10 pets.

11 30. As another example, Antech has provided false negative results for
12 Giardia in veterinary patients, such as in the instance of an animal named Honey
13 Fricano. Giardia is a zoonotic disease that humans can contract from dogs, which
14 will increase the risk that the human will contract infections. Consequently, false
15 negative results for this condition increases the likelihood that human will
16 contract Giardia.

17 31. By providing invalid results to veterinarians across the country,
18 Antech is also, in effect, proving invalid results to pet owners. As a result, pet
19 owners lost pets needlessly and had to experience their pets suffering prolonged
20 treatment, with concomitant psychic and economic costs resulting from Antech's
21 poor quality laboratory practices.

22
23 **D. Antech's False Lab Reports Are a Foreseen Consequence of Its**
24 **Practice of Excessively Reducing Labor Costs**

25 32. When Dr. Patt has been able to get an explanation from Antech as to
26 why lab results were faulty, the most common explanation is that the lab
27 technician read the results incorrectly. This is not surprising given that Antech's
28

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1 lab technician positions are lowly paid, often working at night, and poorly
2 managed.

3 33. Antech lab technicians made the following comments about their
4 employment on the website Glassdoor.com:

- 5 (a) Poor hourly wage and no work/life balance.
- 6 (b) Over worked under paid better off working at Walmart.
- 7 (c) Worst place I have ever worked in my life.
- 8 (d) There is a high turnover rate. I attribute this to a low pay and
9 unrewarding work environment.
- 10 (e) Under minimum wage cause of zoning loophole, not worth working
11 here the pay is terrible for the amount of work expected from you.
12 Especially for an overnight position and quota based job
13 performance.
- 14 (f) You make a dollar more than minimum wage that it.

15 34. Antech lab technicians made the following comments about their
16 positions on the website Indeed.com:

- 17 (a) This is a terrible place to work. No work-life balance, terrible
18 management/HR, low pay, and overall abusive work culture.
- 19 (b) Pay was less than I hoped for after two raises and promotions. I
20 ultimately decided to move on with my career in search of greater
21 challenges and better pay.
- 22 (c) Poorly trained management and expected to know everything
23 without proper training beforehand and you never get out on time.
24 OT is an expectation instead of an option.

25 35. In short, Antech has engaged in a variety of conduct designed to cut
26 its labor costs as low as possible, below the level that would allow it to provide
27 the level of professionalism and accuracy it promises in the Exclusive Agreement
28 and Antech marketing materials.

E. Antech Coerces Veterinarians to Remain in Contractual Relations

36. Antech uses force, coercion, threats, intimidation and federal lawsuits to keep its veterinarian clients in line paying their annual minimums and exclusively using Antech's services. Antech has filed over 55 federal lawsuits against its veterinarian clients since February 2013.

37. Prior to filing suit, Antech sends a threatening demand letter from its counsel to the veterinarians demanding huge sums of money not justified under the Exclusive Agreement and declaring that they win these cases when they are filed. The letter sent to Dr. Patt, dated August 15, 2018, is attached as Exhibit B, without the attached copy of the Exclusive Agreement.

38. In its letter to Dr. Patt, Antech demanded payment, as follows: "You owe \$298,704.76 which represents the amount that Antech has been damaged by your breach, including the return of the \$24,000 incentive. Accordingly, I will expect that a check made payable to 'Angech Diagnostics' in the amount of \$1298,704.76 [sic] be delivered to my office no later than the close of business on August 24, 2018." The letter does not explain or itemize how Antech determined that it was entitled to almost \$300,000 or how it could be reasonable to require a veterinarian to pay that amount of money nine days from the date the letter was drafted. In most case, Antech simply calculates the amount that the veterinarian would have paid if they had exclusively used Antech for the rest of the term, thus claiming 100% of those payments as "lost profits," without regard to the fact that is not how lost profits are calculated.

39. In one case Antech litigated in Maryland, it claimed damages of \$273,000 over the remaining life of the contract. The Court in a Memorandum Opinion stated that Antech's "chance of actually recovering that amount appears remote."

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1 40. Antech's demand letters are drafted to maximize the *in terrorem*
2 effect on the recipients in the hope that they will generate further payments to
3 Antech and prevent the recipients from determining the valid defenses they may
4 have.

5 41. Antech also requires the use of nondisclosure agreements in its
6 settled litigation to prevent the veterinarians from putting each other on notice
7 about Antech's tactics and its continuous provision of false lab results.

8 42. One veterinarian stated that they had been threatened with a slander
9 suit from Antech upper management if they posted on the online forum with
10 complaints similar to Dr. Patt's complaints.

11 43. Antech threatened to sue another veterinarian with similar
12 complaints and indicated that Antech would seek all of his records, including the
13 posts on the forum. Antech also sent an investigator to take photographs of the
14 IDEXX box on his door as proof that he was not exclusively using Antech and
15 took video of the IDEXX driver picking up the samples. (IDEXX is Antech's
16 principal competitor.)

17 44. Antech also uses the economic threat of litigation, rather than the
18 merits of prospective litigation, to coerce veterinarians into abiding by the
19 Exclusive Agreement. As a large company that has extensive experience suing
20 under the Extensive Agreement, Antech knows that it can easily afford the costs
21 of each case much more readily than can an individual or small practice
22 veterinarian, who has no such experience. Consequently, Antech expects that
23 many veterinarians will back down rather than follow-through on their desire to
24 end contractual relations with Antech, an expectation that has frequently come to
25 pass.

26 45. A factor increasing Antech's ability to use the economic threat of
27 litigation, rather than the merits of prospective litigation, to coerce veterinarians
28 into remaining in contractual relations with Antech is the governing law and

venue provision in the Exclusive Agreement. *See* Exhibit A, Page 5 ¶ 9 & Page 9 ¶ 12, stating that any disputes arising out of the arrangement will be governed by California law and subject to the venue of this Judicial District. Antech requires veterinarians all over the country to sign agreements containing these clauses, increasing the degree to which Antech is more familiar with the litigation that would ensue than would be the veterinarians, especially those in other states whose attorneys are not licensed to practice in California. As a consequence, both Antech and the veterinarians know that any resulting litigation will be relatively cheaper for Antech and more expensive for the veterinarians than if the Exclusive Agreement was governed by the law of the state in which the veterinarian operated and/or in which the Antech lab performing the tests were located.

46. It has been documented in a number of sources that veterinarians tend to be a very law abiding group relative to other medical professionals and the population at large. This fact makes Antech's practice of suing large numbers of veterinarians for breach of contract even more suspicious and indicative of misconduct on Antech's part.

F. Antech Has Market Power

47. Antech describes itself on its website by stating, "ANTECH Diagnostics® services more than 19,000 animal hospitals throughout North America, operates more than 50 reference laboratories in the US and Canada, and receives up to 45,000 samples daily."

48. Years ago, there were numerous veterinary lab diagnostic services. Over time, they have consolidated. Much of the consolidation has resulted from Antech's purchase of competing services. By 2015, there were only three primary competitors in the market for veterinary lab diagnostic services, IDEXX, Antech and Abaxis. Antech purchased Abaxis, leaving only the two competitors on the national market. Because the vast majority of veterinarians need to use an

1 outside diagnostic lab service, they have only two realistic options: Antech and
2 IDEXX. But IDEXX has its own history of exclusive dealing and other practices
3 designed to restrain effective choice by veterinarians, leaving veterinarians
4 without the free and fair competition among diagnostic laboratories that would
5 foster their ability to avoid the drawbacks of Antech's misconduct.

6 49. Further, Mars, the parent company of Antech, owns more
7 veterinary hospitals than any other entity in the United States. Mars requires such
8 facilities to use Antech exclusively for diagnostic laboratory tests, further
9 insulating Antech from the pressures of competition that would otherwise benefit
10 veterinarians, their patients, and the pet owners who patronize them.

11 **CLASS ALLEGATIONS**

12 50. Plaintiffs bring this action on behalf of themselves and the members
13 of the proposed Class under Rule 23(a), (b)(2), (b)(3), and/or (c)(4) of the Federal
14 Rules of Civil Procedure. The proposed Class consists of the following:

15 All veterinarians and/or their associated practice entities that are
16 parties to an Exclusive Laboratory Services Agreement with Antech
17 or have been such parties at any time since four years prior to the
filing of this Complaint.

18 51. Excluded from the Class are Antech, its parents, subsidiaries,
19 affiliates, officers and directors, any entity in which Antech has a controlling
20 interest, and all judges assigned to hear any aspect of this litigation, as well as
21 their immediate family members.

22 52. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are
23 so numerous that joinder is impractical. The Class consists of around 4,000
24 members. The precise number is within Antech's knowledge and can be
25 ascertained only by resort to Antech's records.

26 53. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are
27 numerous questions of law and fact common to the Class that predominate over
28

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any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether Antech concealed the significant amount of false lab results that it was providing;
- (b) Whether Antech made false representations about the accuracy and dependability of its lab results;
- (c) Whether Antech has cut its labor costs to a level that makes it impossible for Antech to live up to its promises to provide accurate lab results and reports with the requisite level of professionalism;
- (d) Whether Antech took steps to make it more difficult for veterinarians to learn of Antech's practices, as alleged above;
- (e) Whether Antech used the economic threat of litigation, rather than the merits of litigation, to coerce veterinarians to remain in contractual relations with Antech;
- (f) Whether Antech has consciously increased its market power with the result that veterinarians no longer enjoy the benefits of free and fair competition among diagnostic laboratory vendors;
- (g) Whether Antech is placing public health at risk;
- (h) Whether Antech is violating the public trust;
- (i) Whether Class members are entitled to restitution, and in what amount;
- (j) Whether Antech violated its duty of good faith and fair dealing under the Exclusive Agreements; and
- (k) Whether Class Members are entitled to damages and a declaration of relief as a result of Antech's breach.

54. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the claims of the members of the Class and, like all members of the Class,

1 Plaintiffs entered into an Exclusive Agreement with Antech. Plaintiffs have no
2 interests antagonistic to the interests of any other member of the Class.

3 55. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiffs are each a
4 representative who will fairly and adequately assert and protect the interests of the
5 Class and have retained counsel experienced in prosecuting class actions.
6 Accordingly, each Plaintiff is an adequate representative, who will fairly protect
7 the interests of the Class.

8 56. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action
9 is superior to all other available methods for the fair and efficient adjudication of
10 this lawsuit, because individual litigation of the claims of all members of the
11 Class is economically unfeasible and procedurally impracticable. While the
12 aggregate damages sustained by the Class are in the millions of dollars, the
13 individual damages incurred by each member of the Class resulting from
14 Antech's wrongful conduct are relatively small to warrant the expense of
15 individual lawsuits – all the more so in light of likely reprisal by Antech in the
16 form of meritless counterclaims for breach of the Exclusive Agreement and the
17 confidentiality clauses therein. The likelihood of individual Class members
18 prosecuting their own separate claims is thus remote, and, even if every member
19 of the Class could afford individual litigation, the court system would be unduly
20 burdened by individual litigation of such cases.

21 57. The prosecution of separate actions by members of the Class would
22 create a risk of establishing inconsistent rulings or incompatible standards of
23 conduct for Antech. Additionally, individual actions may be dispositive of the
24 interests of the Class, although certain class members are not parties to such
25 actions.

26 58. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). The
27 conduct of Antech is generally applicable to the Class as a whole and Plaintiffs
28 seek equitable remedies with respect to the Class as a whole. Plaintiffs do not

1 seek monetary relief as an aspect of the Rule 23(b)(2) class. As such, the
2 systematic policies and practices of Antech make declaratory or equitable relief
3 with respect to the Class as a whole appropriate.

4 59. Issue Certification. Fed. R. Civ. P. 23(c)(4). In the alternative, the
5 common questions of law and fact, set forth above, predominate and are
6 appropriate for issue certification on behalf of the proposed Class.

7
8 **COUNT I**
9 ***Unfair Business Practices***
10 (California Business & Professions Code § 17200, *et seq.*
Unfair Competition Law (“UCL”))

11 60. Plaintiffs incorporate and reallege by reference each and every
12 allegation above as if set forth herein in full.

13 61. The UCL defines unfair business competition to include any
14 “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive,
15 untrue or misleading” advertising. Cal. Bus. & Prof. Code §17200.

16 62. The gravity of the harm to Class Members resulting from these
17 unfair acts and practices outweighs any conceivable reasons, justifications or
18 motives of Antech for engaging in such deceptive acts and practices. By
19 committing the acts and practices alleged above, Antech engaged in unfair
20 business practices within the meaning of the UCL.

21 63. Antech’s conducts, as alleged above, were also offensive to
22 established public policy, immoral, unethical, oppressive, unscrupulous, and
23 substantially injurious to veterinarians and those who use their services.

24 64. Through unfair acts and practices, Antech improperly obtained
25 money from Plaintiffs and other Class Members. Accordingly, Plaintiffs request
26 that this Court cause Antech to restore this money to Plaintiffs and all Class
27 Members, and to enjoin Antech from continuing to violate the UCL as discussed
28

1 herein and from violating the UCL in the future. Otherwise, Plaintiffs, Class
2 Members, and members of the general public may be irreparably harmed or
3 denied an effective and complete remedy if such an order is not granted.

4 65. Plaintiffs are entitled to an award of costs and attorneys' fees
5 pursuant to California Code of Civil Procedure, section 1021.5 and Civil Code,
6 section 1717.

7 **COUNT II**
8 ***Fraudulent Business Practices***
(California Business & Professions Code § 17200, *et seq.*)

9 66. Plaintiffs incorporate and reallege by reference each and every
10 allegation above as if fully set forth herein.

11 67. A business act or practice is "fraudulent" under the UCL if it is likely
12 to deceive members of the consuming public.

13 68. Antech's use of representations regarding the accuracy and
14 dependability of its lab results and its concealment of the significant amount of
15 false lab results that it reports to veterinarians is "fraudulent" within the meaning
16 of the UCL because it deceived Plaintiff, and was likely to deceive reasonable
17 Class Members, into believing that Antech was offering accurate and dependable
18 lab results. This perception induced reasonable veterinarians, including Plaintiff,
19 to enter into Exclusive Agreements with Antech which they otherwise would not
20 have entered into.

21 69. Plaintiffs objectively relied on Antech's misleading and deceptive
22 representations and omissions regarding the accuracy and dependability of its lab
23 results. Plaintiffs suffered monetary loss as a result of Antech's fraudulent
24 practices described herein.

25 70. Antech also took steps to prevent veterinarians from communicating
26 about their experiences with Antech, thus making it much more difficult for
27 veterinarians to know ahead of time the precise nature of the contractual relations
28

1 that Antech would contend they were entering into, and Antech's policies and
2 practices designed to make it extremely difficult for veterinarians to extricate
3 themselves from Exclusive Agreements.

4 71. Through these fraudulent acts and practices, Antech improperly
5 obtained money from Plaintiffs and the other Class Members. Plaintiffs request
6 that this Court cause Antech to restore this money to Plaintiffs and all Class
7 Members, and to enjoin Antech from continuing to violate the UCL as discussed
8 herein or from violating the UCL in the future. Otherwise, Plaintiffs, the
9 respective Class they seek to represent, and members of the general public may be
10 irreparably harmed or denied an effective and complete remedy if such an order is
11 not granted.

12 72. Plaintiffs are entitled to an award of costs and attorneys' fees
13 pursuant to California Code of Civil Procedure, section 1021.5 and Civil Code,
14 section 1717.

15 **COUNT III**
16 ***Unlawful Business Practices***
(California Business & Professions Code § 17200, *et seq.*)
17

18 73. Plaintiffs incorporate and reallege by reference each and every
19 allegation above as if fully set forth herein.

20 74. A business act or practice is "unlawful" under the UCL if it violates
21 any other law or regulation.

22 75. Both federal law, 15 U.S.C. §§ 1, 2, 14, and California law, Business
23 and Professions Code § 16720, 16726, and 16726² prohibit exclusive dealing
24 contracts where such contracts tend to harm competition in a relevant market,
25 including where they "substantially lessen competition or tend to create a
26 monopoly." Bus. & Prof. Code § 16727.

27 _____
28 ² The Exclusive Agreements specifically state that the governing state law is California law.

1 76. As alleged above, Antech's Exclusive Agreements harm
2 competition, substantially lessen competition, and tend to create a monopoly in the
3 market where veterinarians are consumers: the market for veterinarian diagnostic
4 laboratory tests, supplies, and results. Antech has substantial market power in
5 that market as one of two duopolists, along with IDEXX, who provide nearly all
6 the off-site veterinary laboratory testing in the United States. Antech has
7 consciously increased that market power by the conduct alleged herein and by
8 acquiring other veterinary laboratory testing businesses.

9 77. By tying veterinarians to long-term Exclusive Agreements with the
10 misconduct alleged above, Antech makes it more difficult for them to patronize
11 another veterinary laboratory testing company. In particular, veterinarians are
12 locked into the Exclusive Agreement by:

- 13
- 14 (a) Antech's practice of providing a "loan" at the outset of the
15 agreement whose balance is due only if the Exclusive Agreement is
16 terminated, or if minimum purchase levels are not met;
 - 17 (b) Antech's position that, if the veterinarian terminated the contract,
18 Antech is entitled to all its expected revenue under the terms of the
19 contract, which Antech falsely contends are lost profits;
 - 20 (c) Antech's confidentiality provisions, making it more difficult for
21 veterinarians to learn about Antech's conduct, particularly before
22 they sign the Exclusive Agreement;
 - 23 (d) Antech's practice of suing veterinarians who seek to terminate the
24 Exclusive Agreement, not out of a good faith belief in the merits of
25 the litigation, but in order to impose prohibitive litigation costs *in*
26 *terrorem*;

27 78. Through these illegal acts and practices, Antech obtained money
28 from Plaintiffs and all other respective Class Members. Plaintiffs request that this
Court cause Antech to restore this money to Plaintiffs and the other Class

Members and to enjoin Antech from continuing to violate the UCL, or from violating the UCL in the future. Otherwise, Plaintiffs, the Class, and members of the general public may be irreparably harmed or denied an effective and complete remedy if such an order is not granted.

79. Plaintiffs are entitled to an award of costs and attorneys' fees pursuant to California Code of Civil Procedure, section 1021.5 and Civil Code, section 1717.

COUNT IV
Breach of Contract based on the Duty of Good Faith and Fair Dealing

80. Plaintiffs incorporate and reallege by reference each and every allegation above as if fully set forth herein.

81. Plaintiffs and the Class entered into Exclusive Agreements with Antech.

82. Plaintiffs performed all material terms required under the Exclusive Agreements.

83. Plaintiffs demanded that Antech provide reliable veterinary diagnostic lab results.

84. Antech materially breached its duty of good faith and fair dealing under the Exclusive Agreements for the reasons stated above.

85. Plaintiffs and the Class are entitled to an award of damages, including for the costs of researching and verifying Antech's false laboratory test results, and a declaration that they are not obligated to continue complying with the Exclusive and Annual Minimums required in the Exclusive Agreements – in particular, a declaration that Plaintiffs and the Class are not obliged to repay the value of the incentive payments or the "loan" included as part of the overall pricing scheme in the Exclusive Agreement.

86. Plaintiffs are entitled to an award of costs and attorneys' fees pursuant to California Civil Code, section 1717.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class demand judgment against Antech as follows:

A. An order certifying that this action may be maintained as a class action, that Plaintiffs be appointed Class Representatives and Plaintiffs' counsel be appointed Class Counsel;

B. A judgment awarding Plaintiffs and all members of the Class for damages, restitution or other equitable relief, including, without limitation, disgorgement of all profits and unjust enrichment that Antech obtained from Plaintiffs and the Class as a result of the unlawful, unfair and fraudulent business practices described herein;

C. An order enjoining Antech from continuing to violate the laws as described herein;

D. A declaration that Plaintiffs and the Class are not required to continue compliance with the Exclusive and Annual Minimum provisions of their Exclusive Agreements with Antech – in particular, a declaration that Plaintiffs and the Class are not obliged to repay the value of the incentive payments or the “loan” included as part of the overall pricing scheme in the Exclusive Agreement.

E. A judgment awarding Plaintiffs the costs of suit, including reasonable attorneys' fees, and pre and post-judgment interest; and

F. Such other and further relief as may be deemed necessary or appropriate.

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JURY DEMAND

Plaintiffs demand trial by jury on all claims so triable.

DATED: September 19, 2018

GREEN & NOBLIN, P.C.

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